IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.677 of 2008
DINESH CHOUDHARY
Versus
STATE OF BIHAR
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2. 18.7.2008. Heard learned counsel for the petitioner and Shri G.P.Jaiswal appearing on behalf of the State.

It appears petitioner was convicted for the offence under Section 25(1-b)A and 26(1) of the Arms Act under judgment dated 4.8.2006 passed by the Judicial Magistrate, 1st Class, Nalanda and was directed to undergo rigorous imprisonment for one year with further direction to pay fine of Rs. 1,000/-(One thousand) each under the two counts. The sentences, however, were directed to run concurrently, which conviction and sentences have been modified in appeal under judgment dated 7.6.2008 passed by Additional Sessions Judge, Fast Track Court No.5, Nalanda at Biharsharif as thereunder conviction under Section 25(1-b)A has been set aside on technical ground maintaining conviction and sentence under Section 26(1) of the Arms Act.

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It is submitted on behalf of the petitioner that once the conviction under Section 25(1-b) has been set aside by the appellate court, conviction under Section 26(1) also has got to be set aside, as after setting aside of the conviction under Section 25(1-b), the question of violation of Section 3 of the Act does not arise.

Without going into the correctness or otherwise of the submission noted above, the petitioner having remained in jail for about seven months, this Cr. Revision application is disposed of observing that the cause of justice will be subserved if while maintaining the conviction of the

petitioner under Section 26(1) it is directed that the period already undergone by him will serve the cause of justice and sentence of one year R.I. and payment of fine is, accordingly modified. Thus it is directed that the petitioner, namely Dinesh Choudhary be released forthwith by the court of Judicial Magistrate 1st Class, Nalanda at Biharsarif in connection with Manpur P.S. Case No. 51 of 2005, G.R. No. 2257 of 2005 and T.R. No. 1940 of 2006 if not wanted in any other case.

Let this order be communicated to the court below through fax on payment of usual charges by the petitioner.

Rajesh/ **(V.N.Sinha, J.)**

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